



GENERAL ASSEMBLY

COMMONWEALTH OF KENTUCKY

2006 REGULAR SESSION

SENATE BILL NO. 76

WEDNESDAY, FEBRUARY 1, 2006

The following bill was reported to the House from the Senate and ordered to be printed.

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TREY GRAYSON
SECRETARY OF STATE
COMMONWEALTH OF KENTUCKY
BY R. Saller

AN ACT relating to hazardous waste management.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

1 Section 1. KRS 224.46-520 is amended to read as follows:

2 (1) No person shall engage in the storage, treatment, recycling, or disposal of hazardous
3 waste without first notifying the cabinet and obtaining construction and operation
4 permits from the cabinet. The cabinet shall promulgate regulations establishing
5 standards for such permits but in no case shall a permit to construct or operate a
6 hazardous waste site or facility or a regional integrated waste treatment and disposal
7 demonstration facility be issued unless it can be demonstrated that the proposed
8 facility can be integrated into the surroundings in an environmentally compatible
9 manner, including but not limited to, insuring that hydrologic, seismologic,
10 geologic, and soil considerations have been adequately addressed in the permit
11 application and in an operational plan. In no case shall a permit to construct a
12 hazardous waste incinerator, landfill, or other site or facility for the land disposal of
13 hazardous waste be approved or issued prior to notification of the cabinet by the
14 local unit of government of its actions pursuant to KRS 224.40-310(6). The cabinet
15 shall not issue a construction permit to a regional integrated waste treatment and
16 disposal demonstration facility until it has been issued a certificate of environmental
17 safety and public necessity. A person desiring a construction permit shall file an
18 application on forms supplied by the cabinet which shall contain such information
19 as the cabinet deems necessary and provide evidence that the hazardous waste shall
20 be treated, stored or disposed of in the manner prescribed by the cabinet. The
21 applicant shall not initiate construction at the proposed site of a new facility for the
22 storage, treatment, or disposal of hazardous waste until notice has been given to that
23 portion of the public most likely to be affected by the operation of the proposed
24 facility pursuant to KRS 224.40-310(1) to (5) and until a construction permit for
25 said facility has been issued by the cabinet. The cabinet may consider past

1 performance in this or related fields by the applicant. The cabinet, in making a
2 determination to issue, deny, or condition a construction permit, shall consider the
3 following:

4 (a) An evaluation of alternatives, to include other locations and other treatment,
5 storage, and disposal approaches, different from those proposed, available to
6 the applicant;

7 (b) An evaluation of the public health, safety, and environmental aspects of the
8 proposals;

9 (c) An evaluation of the social and economic impacts of the proposed action on
10 the affected community, to include, at a minimum, changes in property values,
11 community perception and other psychic costs, and the costs and availability
12 of public services, facilities and improvements required to support the facility
13 and protect public health, safety, and the environment;

14 (d) An evaluation of mitigation measures to alleviate problems identified in
15 paragraphs (b) and (c) of this subsection; and

16 (e) The relationship of the proposal to local planning and existing development.

17 Except that in the case of hazardous waste incinerators, landfills, or other sites or
18 facilities for the land disposal of hazardous waste, the provisions of paragraphs (c)
19 and (e) of this subsection shall be determined by the local unit of government
20 pursuant to KRS 224.40-310(6); in the case of a regional integrated waste treatment
21 and disposal demonstration facility the provisions of paragraphs (c) and (e) of this
22 subsection shall be determined by the siting board established pursuant to KRS
23 224.46-820.

24 (2) The cabinet may prohibit the land disposal of any hazardous wastes. The criteria
25 and list of hazardous waste to be prohibited by the cabinet from land disposal shall
26 be identical to any such criteria and list promulgated by the United States
27 Environmental Protection Agency pursuant to the Resource Conservation and

1 Recovery Act of 1976, as amended, (Public Law 94-580). The land disposal of
2 hazardous waste may be permitted for methods determined by the cabinet to be
3 protective of human health and the environment for as long as the waste remains
4 hazardous.

5 (3) In conjunction with the application for permits under this section the applicant shall
6 establish adequate financial responsibility as follows:

7 (a) The applicant shall file as part of his application for a permit to construct the
8 facility an estimate of the cost of closing the facility after its capacity is
9 reached or operations have otherwise ceased and an estimate of the cost of
10 post-closure care. In the case of storage facilities, the cost of closing shall
11 include the cost of properly disposing of the hazardous waste stored. The
12 cabinet shall evaluate this cost estimate and either accept the estimate as made
13 or shall revise it in accordance with acceptable guidelines, using, where
14 available, actual data on closure costs associated with similar existing
15 facilities. Before a permit to operate can be issued, the applicant for any
16 hazardous waste permit shall assure that the funds needed to close the facility
17 are available by establishing assurance through one (1) or more of the
18 following mechanisms: cash, certificates of deposit, irrevocable credit, or
19 other sureties satisfactory to the cabinet and the mechanism shall be
20 established by agreement with the cabinet. The agreement shall provide that
21 disbursement is permissible only upon written approval of the cabinet and
22 whenever, on the basis of any information, the cabinet determines that the
23 owner or operator is in violation of any of the closure requirements for the
24 facility, that the cabinet shall have the right to use part or all of the closure
25 fund to carry out the closure requirements. The financial institution, surety
26 company, or escrow agent shall release these funds upon receiving a forfeiture
27 order of the cabinet issued pursuant to an appropriate administrative hearing

1 considering one (1) or more closure violations. Upon determination that
2 closure has been satisfactorily accomplished, the cabinet shall release the
3 applicant from further financial responsibility for closure;

- 4 (b) Any applicant for a hazardous waste disposal permit shall file with the cabinet
5 as part of his application an estimate of the annual cost of post-closure
6 monitoring and routine maintenance at the site. The cabinet shall evaluate the
7 cost estimate, and, after such modification as may be necessary in light of its
8 evaluation, shall give notice of acceptance of the cost estimate. This cost
9 estimate which will be referred to as the annual post-closure operating cost
10 shall then be used to determine the amount of the post-closure monitoring and
11 maintenance fund to be used for monitoring and maintenance for a period of a
12 minimum of thirty (30) years after facility closure. The post-closure
13 monitoring and maintenance fund shall be cash, irrevocable credit, or other
14 sureties satisfactory to the cabinet and shall be established by an agreement
15 with the cabinet. The agreement shall provide that whenever, on the basis of
16 any information, the cabinet determines that the owner or operator of the
17 facility is in violation of any of the post-closure monitoring and maintenance
18 requirements, the cabinet shall have the right to use part or all of the funds to
19 carry out the post-closure monitoring and maintenance for the facility. The
20 funds shall be released upon receipt of a forfeiture order of the cabinet issued
21 pursuant to an appropriate administrative hearing considering one (1) or more
22 post-closure monitoring and maintenance violations. One (1) year after
23 closure, and annually thereafter for a period of thirty (30) years, the applicant
24 who has carried out all necessary post-closure maintenance and monitoring
25 requirements may upon application to the cabinet be reimbursed out of the
26 post-closure monitoring and maintenance fund an amount equal to the
27 estimated costs for monitoring and routine maintenance for that year. Request

1 for release of funds for reimbursement shall be accompanied by an itemized
2 list of costs incurred. Upon determination that the expenditures incurred are in
3 accordance with the approved plan, or otherwise justified, the cabinet may
4 authorize the release of the funds to the applicant in writing. Any funds
5 remaining in the account following a termination hearing in which the
6 applicant is released of further responsibility shall likewise be released to the
7 applicant; and

- 8 (c) All applicants for any hazardous waste permit shall provide evidence of
9 financial responsibility in an amount and for a time period specified by the
10 cabinet for the purpose of corrective action on and off-site and satisfying
11 claims arising out of injury to persons or property resulting from the release or
12 escape of hazardous waste into the environment. Such financial responsibility
13 may be established by one (1) or a combination of evidence of liability
14 insurance, self-insurance, or other evidence of financial responsibility
15 acceptable to the cabinet. The level of self-insurance shall not exceed ten
16 percent (10%) of equity, and financial responsibility shall be maintained
17 during the entire operation of the facility and until termination. The minimum
18 liability coverage for sudden occurrences, exclusive of legal defense costs, for
19 a storage, treatment, or disposal facility shall be one million dollars
20 (\$1,000,000) per occurrence with an annual aggregate of two million dollars
21 (\$2,000,000). The minimum liability coverage for nonsudden occurrences,
22 exclusive of legal defense costs, for a hazardous waste facility involving land
23 disposal shall be three million dollars (\$3,000,000) per occurrence with an
24 annual aggregate of six million dollars (\$6,000,000). Combined coverage for
25 sudden and nonsudden occurrences shall be no less than the combined totals
26 herein set forth for separate coverage. The cabinet shall accept a
27 demonstration of financial responsibility during the post-closure period of a

1 facility for a lesser amount for sudden or non-sudden occurrences where it is
 2 shown that a lesser amount of financial responsibility will be adequate to
 3 provide compensation for third-party injury or property damage and corrective
 4 action, considering site and facility conditions and other site-specific factors.
 5 Financial responsibility in post-closure for sudden and non-sudden
 6 occurrences and corrective action may be demonstrated through a letter of
 7 credit, surety or other bond, corporate guarantee, trust fund, liability
 8 insurance, self-insurance, or combination of these or other methods as
 9 approved by the cabinet.

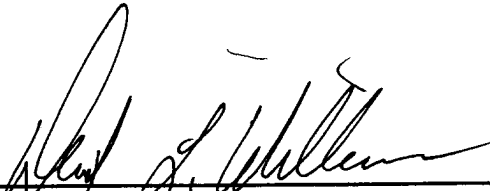
- 10 (4) The cabinet shall promulgate regulations establishing minimal standards for closure,
 11 post-closure monitoring and maintenance, and termination of sites for the disposal
 12 of hazardous waste. Any person who obtains a disposal permit for hazardous waste
 13 shall be responsible for the post-closure monitoring and maintenance of the
 14 permitted facility for a minimum of thirty (30) years after closure of the facility.
 15 The permittee~~[, and]~~ may apply to the cabinet for termination of the responsibility
 16 for post-closure monitoring and maintenance at any time during the thirty (30) year
 17 post-closure monitoring and maintenance period~~[after the site has been closed for~~
 18 ~~at least thirty (30) years]~~. Upon receipt of such application, the cabinet shall provide
 19 notice to the public and to the owner or operator and an opportunity for a hearing on
 20 the termination of the site. In this proceeding, the burden shall be on the applicant to
 21 prove by clear and convincing evidence that additional post-closure monitoring and
 22 maintenance is not necessary for adequate protection of public health or the
 23 environment. The cabinet shall determine either that post-closure monitoring and
 24 maintenance of the site is no longer required, in which case the applicant shall be
 25 relieved of such responsibility; or that additional post-closure monitoring and
 26 maintenance of the site as specified in a plan of operation is still required, in which
 27 case the cabinet may order appropriate remedial measures, impose restrictive

1 covenants as to future use of the property involved, or otherwise condition
 2 termination as may be necessary for adequate protection of public health and the
 3 environment. The cabinet may require additional monitoring, site maintenance,
 4 or remedial measures consistent with KRS Chapter 224 any time after
 5 termination of the post-closure monitoring and maintenance of the permitted
 6 facility in the event that the cabinet determines such actions are necessary for the
 7 protection of human health and the environment.

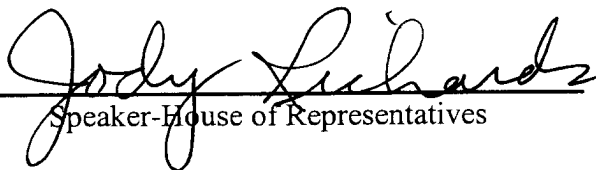
8 (5) In any case where the owner or operator is in bankruptcy, reorganization, or
 9 arrangement pursuant to the Federal Bankruptcy Code or where jurisdiction cannot
 10 be obtained with reasonable diligence in any state court or any federal court over an
 11 owner or operator likely to be insolvent at the time of judgment, any claim arising
 12 from conduct for which evidence of financial responsibility shall be provided under
 13 this section may be asserted directly against the guarantor providing such evidence
 14 of financial responsibility. In the case of any action pursuant to this subsection, such
 15 guarantor shall be entitled to invoke all rights and defenses which would have been
 16 available to the owner or operator if any action had been brought against the owner
 17 or operator by the claimant and which would have been available to the guarantor if
 18 an action had been brought against the guarantor by the owner or operator.

19 (6) The total liability of any guarantor shall be limited to the aggregate amount which
 20 the guarantor has provided as evidence of financial responsibility to the owner or
 21 operator under this section. Nothing in this subsection shall be construed to limit
 22 any other federal statutory, contractual or common law liability of a guarantor to its
 23 owner or operator including, but not limited to, the liability of such guarantor for
 24 bad faith either in negotiating or in failing to negotiate the settlement of any claim.
 25 Nothing in this subsection shall be construed to diminish the liability of any person
 26 under Section 107 or 111 of the Comprehensive Environmental Response,
 27 Compensation and Liability Act of 1980 or other applicable law.

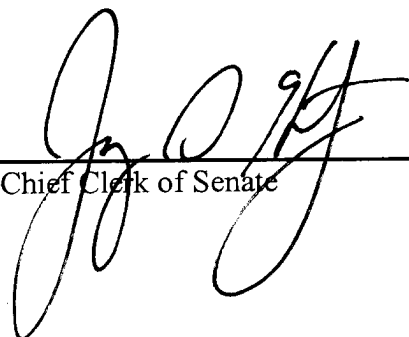
- 1 (7) For the purpose of this subsection, the term guarantor means any person, other than
2 the owner or operator, who provides evidence of financial responsibility for an
3 owner or operator under this section.
- 4 (8) Any hazardous waste treatment, storage, or disposal facility shall close in
5 accordance with the permit and this chapter, if the site or facility has not been
6 maintained in operational condition in conformance with this chapter, for any
7 period of six (6) months or longer. The permittee shall be afforded an opportunity to
8 be heard on the proposed termination of authorization to operate, and termination
9 under this section shall not be required where the permittee demonstrates that steps
10 have been taken to bring the facility, within a reasonable time not to exceed ninety
11 (90) days, into full operational status in accordance with this chapter and applicable
12 regulations. Within ninety (90) days, the cabinet shall review existing hazardous
13 waste treatment, storage, or disposal permits to determine compliance with this
14 section.



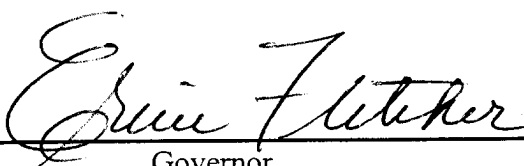
President of the Senate



Speaker-House of Representatives

Attest: 

Chief Clerk of Senate

Approved 

Governor

Date 3.16.06